

REMARKS/ARGUMENTS

Applicant has carefully reviewed and considered the Office Action of 31 October 2008. In response, the applicant traverses the rejection of the claims without making amendment to the claims. Specifically, it is believed that claims 3, 4, 10, 11, 16 and 19-21 clearly patentably distinguish over U.S. Patent RE31,095 to Tschudy and that they should be allowed.

As set forth in MPEP §2131, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 Fed. 2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). As further explained in *Richardson v. Suzuki Motor Co.*, 868 Fed. 2d 1226, 1237, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989), an "anticipation" rejection under §102(b) requires "strict identity" between the prior art invention and the one set forth in the claim. The "mere possibility" that the claimed structure exists in the reference is inadequate to meet the "strict identity" requirement for a proper anticipation rejection. See *Continental Can Company USA v. Monsento Co.*, 948 Fed. 2d 1264, 1269, 20 USPQ 2d 1746 (Fed. Cir. 1991) (holding that anticipation "may not be established by probabilities or possibilities"). Thus, it is clear that the Tschudy reference must expressly or inherently disclose the exact same invention, arranged precisely as required in the current claims, in order for the current rejection under 35 U.S.C. §102(b) to be sustained.

On page 2 of the current Office Action the Examiner applies the Tschudy reference to claims 3, 4 and 16 and explicitly states, "... the housing being further characterized by including ... a channel for receiving the air guide (col. 4, lines 17-29)...." It is respectfully submitted that the Examiner is mistaken and that the Tschudy reference fails to teach or even in any way suggest such a structure. More specifically, Figures 1 and 2 of the Tschudy reference are perspective and bottom plan views of the nozzle assembly 10. Clearly, neither of these drawing figures illustrate the inside of the housing and, accordingly, they can not possibly illustrate the presence of any channel in that housing for receiving an air guide as

explicitly set forth and required by independent claims 3 and 16 of the current application. Further, the remaining drawing figures 3-8 only illustrate what the Examiner has referred to as the "agitator cavity fitting". Accordingly, these additional figures can not possibly disclose any channel provided in the housing for any purpose much less a channel for receiving an air guide as explicitly required by current claims 3 and 16. The text of the Tschudy reference also fails to teach or disclose the channel structure. Accordingly, it is clear that the Tschudy reference does not disclose a channel 62 for receiving an air guide 52 as set forth in current claims 3 and 16 and illustrated in Figure 2 of the current application. Thus, each and every element of independent claims 3 and 16 is not disclosed in the Tschudy reference and the rejection under 35 U.S.C. §102(b) is improper and should be withdrawn.

With respect to current claim 4 it is noted that the housing includes at least one aperture for receiving the mounting lug on the agitator fitting. On page 2 of the Office Action, the Examiner identifies the structure 32 in the Tschudy reference as comprising the "mounting lug". Figure 2 of the Tschudy reference clearly illustrates that mounting lug when the agitator fitting is positioned on the nozzle housing. There is no indication in drawing Figure 2 or in the text at any point that the "mounting lug" 32 is received in any type of aperture provided on the nozzle housing. Thus, once again, the cited reference fails to teach or suggest each and every element of the claim and, accordingly, claim 4 should clearly be allowed.

Claims 10 and 11 depend from claim 3. These claims are rejected on the same grounds as claim 3 and should be allowed for the same reasons.

Claims 19-21 depend from claim 16. These claims are rejected on the same ground as claim 16 and should be allowed for the same reasons. Further, these claims include additional limitations that support their allowability. For example, claim 21 explicitly provides that there is a tab carried on the housing and a notch carried on the agitator cavity fitting and that the tab engages the notch. The Examiner has explicitly failed to indicate where these structures are illustrated in the Tschudy reference and after carefully reviewing the Tschudy reference the

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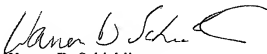
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applicant is unable to identify these features. In this instance it is respectfully submitted that the Examiner has failed to establish on the record any proper basis for the rejection of claim 21 which should be allowed.

In summary, all the pending claims patentably distinguish over the Tschudy reference and the other art of record and should be allowed. Upon careful review and consideration it is believed the Examiner will agree with this proposition. Accordingly, the early issuance of a formal Notice of Allowance is earnestly solicited. Although no fees are believed to be due the Patent Office is authorized to deduct any necessary fees from deposit account no. 11-0978.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Warren D. Schickli", with a stylized flourish at the end.

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